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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVID LEROY HALE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0610-CR-851
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Thomas H. Busch, Judge  
Cause No. 79D02-0603-MR-1

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**May 7, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant David Leroy Hale appeals from the sentence imposed by the trial court after Hale pleaded guilty to Voluntary Manslaughter,<sup>1</sup> a class A felony. Specifically, Hale argues that the sentence is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm the judgment of the trial court.

### FACTS

On February 18, 2006, Hale, James Munday, and Barbara Holt checked into a room at the Devon Plaza Motel in Lafayette. At some point, Munday went to a cemetery to visit the grave of his deceased wife. After Munday returned to the hotel room, Hale, Munday, and Holt drank alcoholic beverages continuously throughout the rest of the day.

At some point, Munday became agitated and turned up the radio volume very high. Hotel guests in neighboring rooms began to bang on the door, demanding that the volume be turned down. Hale and Munday began to argue, and the argument became physical. Hale picked up a knife that he had been using to prepare a steak and stabbed Munday in the right shoulder.

Hale refused to take Munday to a hospital because there were three outstanding arrest warrants for Hale. The next morning, Munday was dead and Hale and Holt attempted to conceal the incident. They disposed of the knife, bloody clothing, and alcohol, subsequently leaving the hotel to go to a friend's home. After police officers learned of Munday's death, a forensic pathologist examined the body and found a stab wound that had penetrated Munday's lung and struck his heart.

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<sup>1</sup> Ind. Code § 35-42-1-3.

On March 3, 2006, the State charged Hale with murder, class B felony aggravated battery, class C felony battery committed by means of a deadly weapon, and class C felony battery resulting in serious bodily injury. On June 27, 2006, Hale pleaded guilty to class A felony voluntary manslaughter in exchange for the State's agreement to dismiss the remaining charges. Sentencing was left to the trial court's discretion and Hale waived his right to have a jury find aggravating factors. Appellant's App. p.13.

At a sentencing hearing on September 12, 2006, the trial court found the following aggravating factors: Hale's criminal history, the fact that he was on probation at the time he committed the instant offense, Hale's limited employment history and penchant for drifting from state to state, the victim's family's recommendation that Hale's sentence be aggravated, and the fact that prior attempts at rehabilitation had been unsuccessful. The trial court found Hale's guilty plea and remorse for his crime to be mitigating circumstances. Finding that the aggravators outweighed the mitigators, the trial court imposed a forty-year executed sentence on Hale. Hale now appeals.

### DISCUSSION AND DECISION

Hale argues that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character. Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." We are also entitled to consider, among other things, aggravating and mitigating factors found—or not found—by the trial court as we conduct a Rule 7(B)

review. See, e.g., Prowell v. State, 787 N.E.2d 997, 1005 (Ind. Ct. App. 2003) (considering statutory aggravators and mitigators as part of an analysis of the character of the offender); Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003) (same). Hale pleaded guilty to class A felony voluntary manslaughter, meaning that the trial court could have imposed a sentence of twenty to fifty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4.

Turning first to the nature of the offense, we observe that Hale killed Munday, his self-described “best friend,” appellant’s br. p. 4, in a drunken brawl after Munday became upset and agitated following a visit to the grave of his deceased wife. There is no evidence suggesting that Munday assaulted Hale. Moreover, after stabbing Munday, Hale refused to take him to the hospital because of his fear that the police would learn of his involvement and execute any or all of the three outstanding warrants against him. Furthermore, after Munday’s death, Hale attempted to conceal his participation in the crime and repeatedly lied to the investigating police officers. It is apparent, therefore, that the nature of this offense supports the forty-year sentence imposed by the trial court.

As to the nature of Hale’s character, we observe that Hale has amassed a multi-year, multi-state criminal history. Hale has prior Oregon convictions for misdemeanor criminal trespass, disorderly conduct, and menacing, as well as a conviction for felony attempted assault. There is an active Oregon arrest warrant for Hale that dates back to 2002. Hale has also been convicted for felonious knowingly concealing stolen property and resisting an officer in Oklahoma, and there is an active Oklahoma arrest warrant dating back to 2004. He

was on unsupervised probation in Oklahoma at the time he committed the instant offense. And at the time of the incident herein, there was an active Indiana arrest warrant against Hale for a pending case in Tipton County involving class B misdemeanor public intoxication. Thus, at the time he committed the instant offense, he was on probation and subject to three arrest warrants in three states.

The trial court found Hale's guilty plea to be a mitigating circumstance, albeit of limited mitigating weight. In exchange for Hale's plea of guilty to voluntary manslaughter, the State agreed to dismiss all remaining charges, including a murder charge. Moreover, the trial court found that the State could have charged Hale with being a habitual offender but elected not to do so because of the guilty plea. Hale argues that he was not eligible for a habitual offender finding. The Presentence Investigation Report (PSI) reveals that on February 2, 2001, Hale was convicted of class C felony attempted assault in Oregon and that on November 3, 2003, Hale committed felonious knowingly stealing stolen property and resisting an officer in Oklahoma. Hale affirmed the accuracy of the PSI to the trial court. Appellant's App. p. 51.<sup>2</sup> Given the information contained in the PSI and Hale's failure to present any evidence to the contrary to the trial court, we conclude that the trial court properly found that the State could have charged Hale with being a habitual offender. Thus, Hale reaped a substantial benefit by pleading guilty and the trial court appropriately declined to give significant weight to this mitigator.

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<sup>2</sup> On appeal, Hale presents new evidence regarding one of the Oklahoma convictions that was not part of the trial court's record. That evidence is not properly part of the record on appeal and we will not consider it.

The record also reveals that Hale has had multiple chances to address his alcohol addiction but has failed to take advantage of those opportunities. He failed to tackle his alcoholism and then blamed this incident on alcohol consumption, lending substantial support to the trial court's conclusion that Hale's expressions of remorse and acceptance of responsibility were insincere.

Finally, we observe that the PSI reveals that Hale has a limited work history, leading the trial court to conclude that he has "drift[ed] from state to state . . . ." Id. at 17-18. Hale argues that, contrary to the PSI's conclusions, he was employed consistently from 1998 until the time of the crime; specifically, he argues that he resided and worked in California from 1998 until 2004 and in Alabama from 2004 until 2006. Hale's criminal history, however, belies that assertion. He was arrested, charged, and convicted in 2001 in Oregon, where he served jail time, and then was arrested, charged, and convicted in 2003 in Oklahoma and arrested and charged in 2004 in Indiana. PSI p. 3, 13. Moreover, the outstanding arrest warrants from each state indicate that he was in Oregon in 2002 and in Oklahoma and Indiana in 2004. Id. Thus, there was support in the record for the trial court's conclusion regarding Hale's work history and movement from state to state.

Having considered the nature of the offense and Hale's character, we find that the sentence imposed by the trial court is not inappropriate.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.